

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DANIELLE WITMER, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROBIN WITMER,

Respondent-Appellant.

UNPUBLISHED
December 13, 2005

No. 262447
Delta Circuit Court
Family Division
LC No. 04-000060-NA

In the Matter of JOSHUA WITMER, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROBIN WITMER,

Respondent-Appellant.

No. 262448
Delta Circuit Court
Family Division
LC No. 04-000061-NA

In the Matter of JACOB WITMER, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROBIN WITMER,

Respondent-Appellant.

No. 262449
Delta Circuit Court
Family Division
LC No. 04-000062-NA

In the Matter of TANISHA BRICKER, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROBIN WITMER,

Respondent-Appellant.

No. 262450
Delta Circuit Court
Family Division
LC No. 04-000063-NA

Before: Whitbeck, C.J., and Bandstra and Markey, JJ.

PER CURIAM.

Respondent Robin Witmer appeals as of right from the trial court's order terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). We affirm.

I. Right To Counsel

A. Standard Of Review

Witmer argues that the trial court deprived her of her right to counsel when it proceeded with the preliminary inquiry after she requested an attorney. This issue is not preserved for appellate review because Witmer failed to raise the issue in the lower court.¹ We review unpreserved constitutional issues for plain error that affect substantial rights.²

B. Appointment Of Counsel

Our review of the record reveals that Witmer was promptly appointed counsel on request, in accordance with MCR 3.915(B)(1). We therefore conclude that this issue lacks merit.

¹ *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 117; 662 NW2d 387 (2003).

² *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

II. Statutory Grounds For Termination

A. Standard Of Review

The trial court addressed and decided the question whether sufficient evidence was presented to establish a statutory ground for termination of Witmer's parental rights. Additionally, the trial court addressed and decided the question of the children's best interests. Therefore, these issues are preserved.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence.³ If a statutory ground for termination is established, the trial court must terminate parental rights, unless there exists clear evidence, on the whole record, that termination is not in the child's best interests.⁴ On appeal from termination of parental rights proceedings, we review the trial court's findings under the clearly erroneous standard.⁵ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁶ To be clearly erroneous, a decision must be more than maybe or probably wrong.⁷ Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁸

B. Applying The Standards

We conclude that the trial court did not clearly err in finding that statutory grounds for termination were established by clear and convincing evidence.⁹ The evidence demonstrated that Witmer's ex-husband and also a former boyfriend sexually assaulted her two daughters. While the trial court gave Witmer the benefit of the doubt in terms of her failure to recognize that the ex-husband was abusing the girls, the trial court was justifiably appalled at Witmer's decision to allow her boyfriend, a man that the children did not even know, to move into her trailer. Witmer told one of the children that he was the plumber and not to worry about him being there. The boyfriend admitted to Witmer that he had a prior criminal sexual conduct conviction, yet she allowed him to remain in the home and even left the children alone in his care. Witmer also received warnings from family members that the boyfriend had been convicted of molestation.

³ *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999).

⁴ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).

⁵ MCR 3.977(J); *Sours*, *supra* at 633.

⁶ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989).

⁷ *Sours*, *supra* at 633.

⁸ MCR 2.613(c); *Miller*, *supra* at 337.

⁹ MCR 3.977(J); *In re Miller*, *supra* at 337.

Still, Witmer believed the man's explanation that the prior conviction was "no big deal." Thus, there was evidence that Witmer was in a position to protect the children but failed to do so.¹⁰

There was also evidence that the children suffered physical and verbal abuse at their mother's hands. She often called them "bitches," "whores," and "fuckers," and even told one of the children that she would be "lucky to live to the end of the night." She hit the children with her keys, with boards resembling two-by-fours, and with a broomstick. Therefore, the evidence demonstrated that Witmer's actions caused physical abuse. Based on the foregoing evidence, the trial court also determined that the children would likely be harmed if returned to Witmer's care.¹¹ Given her own behavior towards the children and her lack of sound judgment, this conclusion was warranted.

Additionally, the record demonstrated that, without regard to intent, Witmer failed to provide the children with proper care and custody.¹² Shortly after the children were taken into custody, Witmer's trailer was condemned. Witmer admitted that the trailer was not fit for the children and explained that she allowed the trailer to get into such a deplorable condition because she had essentially given up. There was often not enough food in the house. The children were sent to school filthy and unkempt. While Witmer claimed to have obtained suitable housing, she did not allow workers to conduct an assessment of the home. One of the children had severe emotional problems associated with her Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder, and posttraumatic stress disorder. Witmer failed to follow-through on counseling for the child and refused in-home counseling, which the experts agreed was the most beneficial type of therapy for the child and her family. Witmer also failed to follow-through with anger-management at Alliance and failed to seek help from that organization in understanding the emotional needs of her children.

C. The Children's Best Interests

Having found that there was a statutory basis for termination, the trial court was required to terminate Witmer's parental rights, unless there was clear evidence on the whole record that termination was not in the children's best interests.¹³ We conclude that the trial court did not err in terminating Witmer's rights. The record demonstrated that there was little in the way of a bond between the children and Witmer. Witmer argues that the child with emotional difficulties suffered a severe setback when she was not allowed visitation with Witmer and that this demonstrates that a bond existed. However, the child's psychologist testified that the child's allegiance to her mother was not healthy and that often times abused children are defensive of their parents. According to the psychologist, it would take a long period of time for the child to recognize that her home environment was not normal and if the child was provided a safe home

¹⁰ MCL 712A.19b(3)(b)(ii).

¹¹ MCL 712A.19b(3)(b)(i) and (j).

¹² MCL 712A.19b(3)(g).

¹³ MCL 712A.19b(5); *In re Trejo*, *supra* at 356-357.

and consistent treatment, her behavior would likely improve. The psychologist did not believe that Witmer could provide such an environment for the child, and we agree.

Affirmed.

/s/ William C. Whitbeck

/s/ Richard A. Bandstra

/s/ Jane E. Markey